EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

September 6, 1988

OCA FILE

TO: See Attached Distribution List

SUBJECT: Talking Points on Amendments to the House Omnibus Anti-Drug Bill, H.R. 5210

Attached are the final talking points on amendments to H.R. 5210, the House omnibus anti-drug bill. They reflect, to the extent practicable, all comments and revisions received through noon on Tuesday, September 6, 1988. You may now use these talking points as explanations for the Administration's positions on each of the amendments.

Please note these changes. Change of position on the Hughes/anabolic steroid amendment. Justice says this amendment is not objectionable. Also: edits to several of the talking points (e.g., Shaw innocent owner; Dornan task force (possible constitutional issue); Studds; Bliley; and Alexander (constitutional objection)); and deletion of talking points for the Broomfield amendment.

Note: A decision on the McCollum/highway funding amendment is pending.

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Attachments

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House Drug Bill - Talking Points

Wortley Amendment: To provide certain exemptions to the notification requirements of the Right to Financial Privacy Act (RFPA) for the transfer of financial records by Federal agencies.

- The amendment would amend the RFPA to facilitate disclosure or transfer of financial information by a bank supervisory agency to the Department of Justice where the information is relevant to a violation of Federal criminal law.

- The Administration supports this amendment.

- The RFPA, with certain exceptions, requires customer notification when a Government agency discloses customer information from bank records to another Government agency. Where criminal misconduct is suspected, customer notifications present the risk of the destruction of evidence or flight of the suspect. An exception to this notification requirement is for information transferred pursuant to a grand jury subpoena.

- The RFPA obstructs cooperation by the Federal banking agencies with the Department of Justice because only "barebone" criminal referrals can be made without a grand jury subpoena. This frustrates and delays the Attorney General's investigation, and may impede criminal prosecutions.

- The RFPA also obstructs cooperation by the banking agencies with the Attorney General by limiting the expert assistance which could be provided by experienced examiners. The RFPA not only protects from disclosure financial records held by a financial institution, but also any information "derived from" those records. Therefore, some banking agencies will only provide examiners to assist the Attorney General who have never examined the bank at issue and, therefore, know nothing about the case. In those instances where the examiner has knowledge about the case, some agencies require a grand jury subpoena. This practice frustrates cooperation and seriously limits the usefulness of the examiner.

- While the Attorney General always can request a grand jury subpoena, this solution is not without difficulty. Obtaining a grand jury subpoena is a time-consuming process and places undue limitations on the use of the information. The proposed amendment will only eliminate this procedural problem.

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- The amendment will not grant the agencies any greater authority in making criminal referrals. Under the amendment the agencies will not be authorized to make any criminal referral they could not already make under current law.

- This amendment will not undermine the purpose of RFPA to protect individuals from improper use of financial information. Any information transferred to the Attorney General must still be legally obtained by the banking agency and transferred only for legitimate law enforcement purposes.

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House Drug Bill - Talking Points

Wortley Amendment: To amend the Right to Financial Privacy Act (RFPA) to allow a description of records in place of the actual presentation of records to to a grand jury when presentation is impractical.

- o This amendment creates an exception to the current RFPA requirement that customer records obtained pursuant to a grand jury subpoena must actually be presented to the grand jury. Under the proposed exception, presentation of records to the grand jury need not be made where the volume of records make such presentation impractical, in which case a description of the contents of the records must be provided.

- o The Administration supports this amendment.

- o Physical presentation of records to a grand jury is a costly procedure that wastes the jurors' time and the Government's money when a large volume of records is involved. It requires taking members of the grand jury to a Government warehouse to view crates of records that have been obtained by a grand jury subpoena.

- o The requirement for physical presentation of the records serves no privacy interests, since other provisions of the RFPA regarding grand jury records and the Federal Rules of Criminal Procedure adequately protect against unauthorized use of subpoenaed records.

- o The amendment retains the physical presentation requirement where presentation is not impractical.

- o An identical amendment was reported by the House Banking Committee earlier this year.

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House Drug Bill - Talking Points

Ackerman Amendment: To require a study to provide comprehensive statistical data on the effect of drug treatment programs.

- o The amendment would require accumulation of data on treatment capacity, demand, and effectiveness.
- o The Administration has no objection to this amendment.
- o Very few States gather reliable data on treatment demand. The available data are very "soft." The requirements of the bill would lead to "harder" and more reliable information.
- o Insofar as reliable data can be gathered and assessed, the availability of such data is important to doing treatment planning.
- o We are concerned about the level of need for universal Federal support for treatment efforts and this information is critical for that purpose.

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House Drug Bill - Talking Points

Rangel Amendment: To provide for mandatory life imprisonment for those who commit murder in the course of a drug felony.

- o This amendment provides for mandatory life imprisonment for intentionally killing any person during the commission of a drug felony or while attempting to avoid apprehension, prosecution, or service of a prison sentence for a drug felony.
- o The Administration supports the death penalty and would prefer the Gekas amendment, which authorizes the death penalty under the same criteria as outlined by the Rangel amendment.
- o However, the Administration supports the Rangel amendment.
- o Severe penalties are needed for serious drug-related offenses that involve intentional killing.

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House Drug Bill - Talking Points

Gekas Amendment: To provide for the death penalty for those who commit murder in the course of a drug felony and to establish constitutional procedures for the imposition thereof.

- o This amendment would provide that whoever, during the commission of, or in furtherance of, a drug felony, intentionally kills any law enforcement officer or any other person may be sentenced to death. The amendment also would establish procedures for imposing a sentence of death that are intended to withstand constitutional scrutiny.
- o The Administration supports this amendment.
- o The President has repeatedly sought enactment of legislation to permit imposition of the death penalty in serious cases, most recently in his criminal justice reform proposals that were sent to Congress on 10/16/87.
- o The death penalty for particularly serious offenses has widespread support among the public and members of Congress.
- o The death penalty is on the statute books of many States and should be available as a sanction at the Federal level.
- o The death penalty is an effective deterrent and its imposition is appropriate in especially egregious cases.

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House Drug Bill - Talking Points

Levin Amendment: To prohibit the use of the death penalty for a person who is mentally retarded.

- This amendment prohibits carrying out a sentence of death upon a person who is "mentally retarded."
- The Administration opposes this amendment.
- The Gekas death penalty amendment better addresses the issue.
- The Gekas amendment prohibits carrying out a sentence of death upon a person who, by reason of mental disease or defect, is unable to understand his impending death or the reasons for it.
- The amendment does not define the term "mentally retarded" and would lead to considerable litigation.

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House Drug Bill - Talking Points

Edwards Amendment: To impose limitations with regard to the death penalty.

- Any or all of the following amendments are to be considered en bloc:

  1. The addition of specific mitigating factors the jury must consider in imposing the death penalty.

  2. A requirement that the Comptroller General study the cost of implementing procedures for imposing and carrying out a death sentence.

  3. A provision allowing the defendant on appeal and in post-conviction proceedings to raise claims and defenses that were not raised in prior proceedings due to failure of counsel.

  4. A provision specifying that the jury or court is never required to impose a death sentence, regardless of its findings as to aggravating and mitigating factors, and requiring that the jury be so instructed.

  5. A provision that a juror may not be disqualified because of his belief against capital punishment unless it is "unmistakenly clear" that he would "automatically vote" to find the defendant not guilty or to recommend a sentence other than death without regard to the evidence, or unless such belief would render the juror unable to return a verdict of guilty.

  6. A prohibition against carrying out a sentence of death against a person who is mentally incompetent, defined in broader terms than in the Gekas amendment, and covering one who cannot understand the nature of the pending proceedings or the reasons why the punishment may be unjust or unlawful.

- The Administration opposes these amendments if they include #3, regarding the raising of defenses at any time, or #5, regarding the disqualification of jurors because of their opposition to capital punishment.

- Amendment #3, allowing the defendant on appeal and in post-conviction proceedings to raise claims or defenses that could have been raised in prior proceedings but were not so raised, would mean that death penalty cases would never end. The amendment would encourage defense counsel to prolong death penalty cases unduly by raising one

defense at each stage for the purpose of delaying the entire proceeding. The amendment includes no justification other than that counsel simply failed to raise the defense previously. The amendment is inconsistent with Supreme Court decisions. (See, Wainwright v. With, 469 U.S. 412 (1985).)

- Amendment #5 regarding the disqualification of jurors opposed to capital punishment places an unreasonable burden on the Government to face jurors opposed to capital punishment unless their beliefs would cause them "automatically" to reach a finding of not guilty or to be unable to return a verdict of guilty. (Which of these two inconsistent standards would prevail is unclear.) Since a death penalty case is a bifurcated proceeding, a juror's opposition to capital punishment should not influence his finding of guilt or innocence. The amendment prohibits the disqualification of a juror who admits he would find it extremely difficult to reach a guilty verdict, regardless of the evidence, because of the possibility of the imposition of a sentence of death at the sentencing stage of the proceeding. The standard that would be imposed by the amendment is unreasonably difficult and is not required by the Constitution.

House Drug Bill - Talking Points

Conyers Amendment: To provide for the representation of indigent defendants charged with capital crimes.

- o This amendment entitles indigent persons charged with crimes punishable by death to the appointment of counsel who meet specified competency criteria, such as three years experience in trying felony cases or in handling felony appeals. The amendment also authorizes the court to fix the compensation for appointed counsel in capital cases at rates it determines appropriate in order to provide a defendant with representation equivalent to that available to defendants who can pay for their own defense.

- o The Administration opposes this amendment.

- o Current law adequately provides for defendants' representational rights in capital cases by authorizing the court to assign such counsel as the defendant may desire, up to two attorneys, who are granted free access to the defendant at all reasonable hours.

- o The amendment places no limit on the number of attorneys who may be appointed to represent the defendant at one time.

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House Drug Bill - Talking Points

Ortiz Amendment: Requires that not less than fifty percent of the funds shared with local law enforcement agencies from the Federal assets forfeiture funds (Justice and Customs) be used by State and local governments for prison construction, expansion, maintenance and operation.

- o This amendment provides for the use of "equitable sharing" payments to State and local governments for the construction, expansion, maintenance, and operation of penal facilities (prisons, jails, and correctional institutions) in an amount not less than 50 percent of the total payment unless the recipient specifically requests less.

- o The Administration opposes this amendment.

- o This amendment would create mandatory expenditures for State and local prisons.

- o Justice's and Customs' current criteria for determining the State and local payment provide the necessary flexibility to compensate for varying circumstances.

- o This provision is inconsistent with the Administration's Federalism concerns. Current equitable share guidelines allow the State or local government to use payments for any law enforcement purpose, including penal facilities' operation and construction. By restricting the use of 50 percent of the payment for prison construction, the amendment would preempt State procedures and priorities for no apparent reason.

- o This provision limits the use of the payments to address the changing law enforcement needs of State and local governments.

DRAFT House Drug Bill - Talking Points

Lungren Amendment: To impose limitations on the use of the exclusionary rule for Fourth Amendment violations.

- o This amendment would admit reliable physical evidence -- such as narcotics seized from a drug trafficker -- where the responsible officers acted with an objectively reasonable, good faith belief that their conduct was lawful.

- o The Administration supports this amendment, the purpose of which is consistent with proposals made by the President in his 10/16/87 transmittal of the proposed Criminal Justice Reform Act (title I of H.R. 3777).

- o The House of Representatives passed this proposal as section 673 of H.R. 5484 in 1986. The Senate passed it as S. 1764 in 1984.

- o The impact of the exclusionary rule is overwhelmingly focused on drug cases. For example, a 1982 study by the National Institute of Justice found that over 70 percent of all felony cases rejected for prosecution in California because of potential exclusionary rule problems were drug cases. The same study found that almost 3,000 felony drug arrests were not prosecuted in California during the four-year period from 1976 through 1979 because of such problems.

- o In order to prosecute drug crime effectively, we must limit the application of the exclusionary rule to cases where it may actually have some value in preventing search and seizure violations. It does not have such value in cases covered by the amendment. As the Supreme Court observed in United States v. Leon, 468 U.S. 897, 919-20 (1984): "[W]here the officer's conduct is objectively reasonable, excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that . . . the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty."

- o The Supreme Court has already applied the standard of this Amendment to searches under warrants through its decision in United States v. Leon, 468 U.S. 897 (1987). The Fifth and Eleventh Circuits, following the decision in United States v. Williams, 622 F.2d 830 (5th Cir. 1980), have recognized a general "reasonable good faith" exception to

the exclusionary rule for several years, in both warrant and non-warrant cases, with no untoward consequences. The "reasonableness" standard is also routinely applied in civil suits in determining an officer's personal liability based on search-and-seizure violations. See Anderson v. Creighton, 55 U.S.L.W. 5092 (1987).

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House Drug Bill - Talking Points

Davis Amendment: Strikes provision for the National Center for Prison Drug Rehabilitation Program Personnel.

- The amendment deletes provisions that would require the National Institute of Corrections to establish and operate a national training center for training of Federal, State, and local prison officials in drug rehabilitation programs. These programs would serve criminals convicted of drug-related crimes or who have developed drug dependencies.

- The Administration supports this amendment, because the Federal Law Enforcement Training Center (FLETC) currently provides consolidated training for Federal law enforcement agencies and is capable of meeting the additional drug training needs of prison officials.

- FLETC has proved to be an extremely cost effective provider of a wide variety of training needs for its sixty-three participating agencies. The proposed National Center for Prison Drug Rehabilitation Personnel would require that training facilities, classrooms, dormitories, and cafeterias be duplicated at much greater cost. Further, the Bureau of Prisons, as the third largest participant at FLETC, has an extensive network of advanced training courses, instructors, and facilities already in place at FLETC's Georgia facility.

- Conference action on the 1989 Treasury-Postal appropriations bill includes a general provision restricting the use of Federal funds to expand law enforcement training facilities, except for those facilities within or contiguous to existing locations.

- The President's FY 1989 Budget requests adequate resources to accommodate anticipated training requirements.

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House Drug Bill - Talking Points

Edwards Amendment: To permit the Attorney General to assess a civil penalty against any person possessing small amounts of certain controlled substances.

- o This amendment permits the Attorney General to impose a civil penalty of up to $10,000 against any person found to possess small ("personal use amount") of certain controlled substances. A civil penalty could only be assessed after an opportunity for a hearing. An individual against whom the Attorney General orders the assessment of a civil penalty would be permitted to obtain judicial review of the decision. A five-year statute of limitations would apply.

- o The Administration supports this amendment.

- o Enactment of this amendment would be consistent with the Administration's policy of zero tolerance with respect to illegal drug use.

- o Because a civil, not a criminal, penalty is involved, it would be easier to make sanctions against illegal drug users "stick" (i.e., because proof "beyond a reasonable doubt" would not be required).

- o This amendment would not take the place of criminal sanctions. Rather, it would provide the Justice Department with greater leeway than it currently possesses in deciding how best to proceed against illegal users.

- o It is not anticipated that the civil penalty authority would be widely employed; however, the Administration recommends that the Justice Department be provided with such authority for use in appropriate circumstances.

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House Drug Bill - Talking Points

Shaw/Dioguardi Amendment: Requires random drug testing as a mandatory condition of probation for individuals convicted of a drug-related offense.

- The amendment requires random drug testing in certain judicial districts as an additional, mandatory condition of probation for defendants convicted of drug-related offenses. This would be a one-year demonstration program.
- The Administration supports the amendment in order to more effectively enforce its drug-free policy.
- Probation is a privilege which can be used as an incentive to curtail drug use; random drug testing provides an additional deterrent.
- Current practices within the Federal Bureau of Prisons (BOP) are consistent with this amendment; BOP tests monthly all prisoners that are likely to be suspected of drug use.
- Currently, probationers involved in a drug counseling program are tested randomly. Not all individuals convicted of a drug-related offense are in counseling; the amendment compensates for this.

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House Drug Bill - Talking Points

Davis Amendment: Authorizes to be appropriated $30 million for each of FY's 1989, 1990 and 1991 for the offices of the United States Attorneys.

- This amendment would support approximately 275 additional assistant U.S. Attorneys.
- While the Administration has not yet taken a position on funding issues, support of the President's 1989 request for the U.S. Attorneys is strongly recommended.
- The President's request for 1989 totals $424 million. The House and the Senate have cut the request for U.S. Attorneys by $44 million and $33 million respectively. In 1988, Congress cut the President's request for U.S. Attorneys funds by $34 million. We cannot continue to make these kinds of reductions to litigative resources and expect to maintain an aggressive campaign against drug violators.
- Instead of authorizing more funds, Congress needs to appropriate more funds in line with the President's request.

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House Drug Bill - Talking Points

Shaw Amendment: To delete "innocent owner" provisions of bill and amend the expedited petition procedures in the bill.

- The Shaw amendment strikes the two "innocent owner" provisions contained in the bill, which would create a defense to seizure and forfeiture from a drug related offense, and amends the expedited administrative process for temporary release of seized conveyances contained in the bill.

- The Administration supports this amendment as a significant improvement over the bill's current provisions. However, the Administration will continue to oppose in the Senate any expedited petition process provision.

- The "innocent owner" provision in the bill, which the Shaw amendment would strike, would destroy the zero tolerance initiative and gut the Federal Government's entire anti-smuggling efforts.

- The "innocent owner" provision effectively absolves the boat or vehicle owner from any responsibility for using "due care" and taking reasonable precautions that his/her property is not used for drug smuggling.

- Although opposing the concept of an expedited petition process for "innocent owners," since regulatory procedures currently exist to protect innocent owners, the amendment is a significant improvement to the very flawed provision currently in H.R. 5210.

- The expedited petition process in the bill does not differentiate between personal use amounts and larger quantities of drugs, as the Shaw amendment does. The House bill requires an overly burdensome judicial proceeding, compared to Shaw's administrative review.

- The introduction of the innocent owner provision was motivated by a few highly publicized vessel seizures during the initial phase of zero tolerance. It is important to note that the vessels were returned to their owners quickly, after they had established their lack of knowledge and the steps they had taken to prevent the vessel's involvement with drugs.

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House Drug Bill - Talking Points

Oxley Amendment: To extend the crime of money laundering to "sting" operations.

- o This amendment makes money laundering transactions in a government sting operation subject to the crime of money laundering, 18 U.S.C. 1956.
- o The Administration supports this proposal, which was among the recommendations of the National Drug Policy Board.
- o This amendment would make the useful tool of a sting operation available to money laundering investigators.
- o Transactions involving funds "represented" by Government agents to be criminal proceeds would be subject to the sanctions of the money laundering crime.
- o This technique would be a significant aid in investigating money laundering in furtherance of drug crimes and related criminal activities.
- o The Government must have every possible weapon available in its battle against those persons who help drug traffickers and organized crime by laundering the proceeds of their illegal enterprises.

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House Drug Bill - Talking Points

Shaw Amendment: To provide mandatory minimum sentences for simple possession of quantities of "crack."

- o This amendment provides a mandatory minimum 5-year prison term for simple possession of more than 5 grams of "crack" (cocaine base) for a first offense and smaller quantities for subsequent offenses. The maximum term would be 20 years.

- o While supporting the concept of higher penalties for "crack" possession, the Administration opposes the amendment in its current form because 5 grams of "crack" constitute a trafficking amount, not a simple possession amount. A quantity of 5 grams itself raises a presumption of an intent to distribute so that a successful charge of possession with intent to distribute -- a more serious crime than simple possession -- can be brought. Possession with intent to distribute 5 or more grams of "crack" is subject to up to 40 years imprisonment (with a 5-year mandatory minimum), a 2 million dollar fine, and a minimum of 4 years of supervised release under current law. Providing by law that 5 grams of "crack" may constitute simple possession could destroy the presumption previously recognized by the courts of an intent to distribute.

- o Enhanced penalties for simple possession of "crack" may be appropriate for smaller quantities, such as 2 grams, with a penalty structure that increases with subsequent offenses but not with increased quantities.

- o Any increase in penalties for possession of "crack" should clarify that diversionary and expungement procedures currently available for simple possession offenses do not apply.

- o The Administration's position is explained fully in a letter of August 4, 1988, regarding H.R. 4916 from then Attorney General Edwin Meese to Chairman Rodino.

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House Drug Bill - Talking Points

Dornan Amendment: Establishes task force on clandestine drug laboratories.

- The amendment establishes a joint Drug Enforcement Administration (DEA) - Environmental Protection Agency (EPA) task force to formulate and implement a program for the cleanup of clandestine drug laboratories. The task force would be required to report to the President and Congress.

- The Administration supports this amendment. DEA and EPA are currently working jointly on an informal basis. Although the amendment is acceptable, two changes are desirable.

- First, the amendment should make clear that the reporting requirement does not purport to mandate concurrent reports to the President and Congress. A concurrent reporting requirement would abridge the prerogatives of the President to review reports prior to their release from the Executive branch to Congress.

- Second, the amendment should be modified to include language stating that the DEA and EPA are not to be considered generators of hazardous waste. This would protect the DEA from "taking ownership" of hazardous wastes when it closes a clandestine laboratory, and possibly incurring the full cost of cleanup from budgetary resources not intended for that purpose.

- Clandestine drug laboratories are hazardous waste producers, presenting long-term health hazards.

- Cleanup operations undertaken at the site of a seized laboratory often neglect residual hazardous wastes which threaten the lives of innocent nearby residents, as well as the water supply of surrounding communities. The task force would help address this problem.

- Current anti-drug strategies of many State and local governments do not take account of the need to handle hazardous wastes in laboratory cleanups. The task force would be helpful to States currently lacking appropriate procedures.

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House Drug Bill - Talking Points

Hughes Amendment: Eliminates earmarking of funds for Drug Enforcement Administration (DEA) voice privacy equipment.

- The amendment strikes out the section of the bill earmarking $800,000 for digital voice privacy (DVP) equipment from DEA funds.
- The Administration has no objection to this amendment.
- Funding for DVP radios is necessary to provide for safe communications and to help ensure that drug criminals do not become apprised of DEA operations. Funding, therefore, has been included in the President's 1989 request for DEA. It is not necessary to earmark funds for this specific program.
- Instead of earmarking funds, Congress needs to appropriate funds consistent with the President's request.

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House Drug Bill - Talking Points

Pepper Amendment: To authorize $11 million for demonstration grant programs to provide funds for specified local police departments in Dade County, Miami, and Miami Beach, Florida for use in drug related law enforcement; and to Dade County for drug treatment, and prevention.

- This amendment provides for Federal grant funds to be allocated by the Bureau of Justice Assistance to the police departments of Dade County, Florida, the City of Miami, Florida, and the City of Miami Beach, Florida for the purposes of enforcing State and local anti-drug abuse laws. Grants are also to be made to Dade County, Florida to provide for programs for the treatment of drug dependent offenders, and to provide for programs for the prevention of unlawful drug use.

- The Administration opposes this amendment, because it creates a special categorical program for Dade County, Florida.

- The Administration has taken no position yet regarding funding issues except that we strongly support the President's Budget. The President requested no funding for such a demonstration program.

- The Administration does not recommend a categorical approach to the drug abuse problem as suggested by this amendment. The experience from the Anti-Drug Abuse Act of 1986 shows that State-wide coordination is a necessary component of a sound anti-drug abuse strategy. This amendment would negate the planning, programming, and coordination that has been set in place at the State level in Florida since 1986.

- This amendment undermines the necessary work of the other components of the State and local criminal justice system, most notably that of prosecutors, courts, and corrections. Such a narrow focus of funds only to the local police departments and county government shows a lack of understanding of the problem at the local level.

- The Administration opposes direct funding of such programs on Federalism grounds. Because States have the authority and a vested interest in programming of this type, they should have a major role in the implementation process.

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House Drug Bill - Talking Points

Studds Amendment: To provide for an "innocent owner" defense to seizure and forfeiture of drug-related assets.

- The Studds amendment would create "innocent owner" exceptions for forfeiture of drug related conveyances in title 19 (Customs) and Title 49 (Transportation) seizures.
- The Administration opposes this amendment.
- This amendment would represent a serious retreat from the Administration's policy of strict enforcement of existing drug laws.
- Moreover, it would create a statutory defense to forfeiture for possession of both personal use quantities and larger ("trafficking") quantities of illegal drugs.
- This proposal could require the Government to litigate the innocent owner issue in every case, whether a large or small quantity of drugs was found. In other words, in order to forfeit the conveyance, the Government is going to have to litigate the issue of the owner's consent, even when the conveyance is discovered carrying bales of drug contraband.
- The amendment neither requires nor encourages a reasonable standard of care on the part of an owner to take reasonable precautions that his/her property is not used for drug smuggling. In fact, it encourages "willful blindness" on the part of the owner to the background history of a ship's master or crew and the use to which his property is being put.
- The current regulatory and administrative procedures provide an effective mechanism to safeguard the interests of innocent owners who have taken reasonable steps to ensure that their property has not been used to support drug use and other illegal activity.
- Some argue that the innocent owner provisions merely extend to owners of conveyances the same protections now provided to owners of real property in 21 U.S.C. 881(a)(7); however, the 1984 amendment creating the real property forfeiture provision was made not to extend the innocent owner defense but to include real property within the category of property subject to forfeiture.

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- The innocent owner defense for real property forfeitures was meant to include a provision "like that now included in those provisions permitting the civil forfeiture of certain vehicles and moneys or securities." H.R. Rep. No. 1030, 98th Congress, 2d Sess. 195. Thus, Congress reaffirmed the then-existing innocent owner exceptions for common carriers and for conveyances unlawfully in the possession of another, and did not intend to expand this exception, as the current version of H.R. 5210 and the Studds amendment would do.

- The Studds amendment is motivated by a few highly publicized vessel seizures during the initial implementation of the Administration's zero tolerance intitiative. It is important to note that drugs were found on board each of the vessels seized. Moreover, the vessels were returned to the owners quickly, but only after the owners had established their lack of knowledge and the steps they had taken to prevent the vessels' involvement with drugs. These early difficulties should not be permitted to jeopardize the deterrent effect and significant impact that asset forfeiture has on reducing drug use and smuggling.

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House Drug Bill - Talking Points

Davis Amendment: To establish a Federal vessel identification system to be maintained by the Secretary of Transportation and to be paid for through user fees.

- The Secretary would be required to make detailed information available on the ownership of documented, State numbered, and titled recreational vessels, including where a lien or other security interest is filed if the vessel is financed in a titling State.

- This amendment also codifies the Ship Mortgage Act as part of subtitle III of title 46, U.S. Code. Included in this codification is a provision that would grant preferred status to a mortgage on a vessel titled in a State
  (a) having a certified titling system and
  (b) participating in the vessel identification system to be set up by the amendment.

- The Administration supports the concept of a mechanism to assist law enforcement officials in readily ascertaining ownership information on vessels but opposes the amendment in its current form because of certain technical issues, and concerns about the scope and comprehensiveness of the system, and because an adequate source of start-up and operating funds has not been identified.

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House Drug Bill - Talking Points

Johnson/Dorgan Amendment: Establishes an incentive grant program to reduce drunk driving. In order to be eligible for a two-tier system of grants, States would have to adopt certain prescribed measures, including administrative suspension of drivers licenses of more than 90 days for a first offense and more than one year for repeat offenders. Authorizes appropriations of $25 million in FY 1989 and $50 million in FY's 1990-1991.

- o The Administration opposes the creation of a new incentive grant program for drunk driving.
- o Congress has already created an alcohol safety incentive grant program in Section 408 of title 23, United States Code, which specifically encourages the prompt administrative suspension of licenses. No further Federal incentive is needed.
- o The criteria for administrative suspension in the amendment are unnecessarily detailed. Under Federalism, the States should be given the maximum flexibility to accomplish program objectives. They are in the best position to know how to accomplish the purpose of the program most effectively based on their unique circumstances.
- o To be eligible for a basic grant, a State would have to provide for the administrative suspension of drivers licenses within 15 days of arrest, the turnback of drunk driving fines to community programs, and the adoption of a blood alcohol concentration of .10 per cent as per se evidence of intoxication.
- o The fifteen-day period allowed for license suspension is too short to make the program effective. Few States will be able to meet this deadline for administratively processing suspensions and would qualify for the program.
- o The .10 percent concentration level per se evidence standard is a good provision, but incentive grants are not needed to encourage States to adopt it because the States are already moving on their own to do so.

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- To be eligible for a supplemental grant, a State would have to provide for mandatory blood testing of drivers in any crash involving a fatal or serious injury, an effective means of preventing drivers under the age of twenty-one from obtaining alcohol, and measures to prohibit driving a vehicle with an open container of alcohol on board.

- As a result of the 1984 legislation aimed at getting all States to set their legal drinking age at 21, 33 States have raised their drinking ages to 21, which means that all fifty States and the District of Columbia have age 21 drinking laws. The States have already met this objective.

- The open container prohibition is a useful highway safety provision which the States are moving on their own to adopt.

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House Drug Bill - Talking Points

Hughes Amendment: Establishes statutory penalties for the illegal distribution of anabolic steroids.

- This amendment provides stronger penalties for the illegal distribution of anabolic steroids through an amendment to the Food, Drug and Cosmetic Act.

- The Administration does not object to this amendment.

- Anabolic steroids are synthetic hormones used to stimulate growth. They add bulk and build muscle and are primarily abused by young athletes looking for shortcuts to developing stronger bodies. However, steroid use has common side-effects of high blood pressure, liver, kidney and heart damage, and except under a physician's care, can be dangerous and potentially life-threatening.

- The Federal Food, Drug and Cosmetic Act empowers the Food and Drug Aministration (FDA) to control potentially dangerous substances. Because of their adverse effects, the FDA currently requires anabolic steroids to be available only by prescription. Distribution of steroids other than by prescription is punishable by up to one year in prison, a fine of $1,000, or both.

- The amendment would by statute remove FDA's discretionary control over anabolic steroids and increase the sanctions against their unlawful distribution.

- Violations would be punishable by up to three years in prison or a fine under Title 18 of the U.S. Code, or both.

House Drug Bill - Talking Points

Bliley Amendment: To direct the Secretary of Health and Human Services to establish a procedure to be used to certify certain clinical laboratories that analyze and determine the results of drug tests.

- o The Administration opposes the creation of a Federal laboratory certification program.
- o The amendment would require the Secretary of Health and Human Services to establish procedures for certifying an organization to carry out the drug testing laboratory certification process. The amendment relies on the Mandatory Guidelines (Federal Register, April 11, 1988, p. 11979) established for certification of labs to test Federal employees which have received considerable support in both the private and public sectors.
- o The Administration supports mandatory drug testing of persons involved in positions of safety and security and therefore believes the Bliley amendment is preferable to the language now in the bill (see below).
- o As we support this testing effort, it is important to safeguard the integrity of the testing system both for the benefit of the individuals who will be affected by the program and the program itself. Without a good program, drug testing as a mechanism of fighting drug abuse will be lost.
- o Any certification process, while protecting the integrity of the system, should not make it so difficult for laboratories to operate that the drug testing program is rendered useless because there are no laboratories available to do the testing. The bill language could create such a situation.
- o H.R. 5210 has language on lab certification that potentially could destroy our efforts to use drug testing as a mechanism for fighting drug abuse. It provides for no latitude by the Secretary in choosing penalties regardless of the reasons why a lab may have misidentified a specimen. The bill assumes an accuracy of 100 percent. If you are inaccurate in only one of thousands of samples tested, you suffer, depending on the mistake, a six or 12 month suspension or permanent revocation. Whether the error was in the labor or a clerical mistake, the penalty is still the same.

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- In this area, the Mandatory Guidelines empower the Secretary to choose an appropriate penalty that fits the magnitude and cause of the error. In the case of reporting a false positive, there is an immediate suspension while the Secretary investigates the reasons for the error. The Guidelines call for revocation in the case unless the Secretary decides otherwise because of the circumstances.

- The Mandatory Guidelines permit for recertification where a lab lost its license and takes steps to correct its practices. The bill would forbid recertification.

- The bill in the case of revocations also requires that any lab "affiliated with" the lab loses its certification as well. The term "affiliated with" is defined in such a way that if a lab has any connection with the lab that lost its license, it too loses its certification.

- There is a real potential under the language proposed in this bill to effectively destroy drug testing as a mechanism to fight drug abuse.

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House Drug Bill - Talking Points

Alexander Amendment: Requires an officer or employee in the Executive branch to make disclosure of "illegal foreign drug activities" information through the agency head. Agency head, in turn, would disclose to law enforcement agency and, upon request, to the Congress and the General Accounting Office. The President must be notified of any determination of nondisclosure and must notify Congress of this. GAO could sue Executive branch to obtain information.

- The Administration opposes this amendment.

- The provision's disclosure requirements concerning illegal foreign drug activities would constitute unconstitutional interference with the President's exclusive authority to control and supervise the Executive branch.

- Congressional reporting requirements could compel disclosure of "raw intelligence reporting," allowing any committee to request information. Turns all committees into "intelligence oversight" committees for narcotics information purposes. Puts GAO into intelligence oversight business. Duplicates existing duty of DCI/Community to keep intelligence committees "fully and currently informed." Withholding mechanism is cumbersome and institutionalizes Executive-Legislative branch disputes. Term which "trips" obligation is vague, leading to underreporting/overreporting with resulting problems.

- Executive branch reporting requirements duplicate long-standing, carefully-crafted, flexible administrative mechanisms for reporting intelligence information to law enforcement authorities, Executive Order 12333, and other liaison mechanisms. Subordinates Presidential foreign relations powers and duties to Presidential law enforcement powers and duties, "tying the hands" of the President. Could be interpreted as requiring certain Intelligence Community units to turn over entire product to law enforcement agencies.

- "Anti-Stonewalling Act" amendment is highly objectionable and should not be passed in any form.

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